

ATTACHMENTS

TO

**Testimony of Ernest L. Stevens, Jr.
Chairman, National Indian Gaming Association**

Concerning

**The Second Discussion Draft of Legislation Regarding
Off-Reservation Indian Gaming**

Before

**The House Committee on Resources
November 9, 2005**

**Chairman Pombo's Revised Proposed Amendments to 25 U.S.C. 2719
(Gaming on Lands Acquired After October 17, 1988)**

(a) Prohibition on lands acquired in trust by Secretary -- Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless--

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and--

(A) such lands are located in Oklahoma and--

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions --

(1) Subsection (a) of this section will not apply ~~when~~ *to any Indian tribe that is newly recognized, restored, or landless as of the date of enactment of this [bill] including those newly recognized under the Federal Acknowledgement Process at the Bureau of Indian Affairs, if --*

(A) ~~the Secretary, after consultation with the Indian tribe and appropriate State, and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or~~ *determines that the lands, acquired in trust for the benefit of the Indian tribe for the purposes of gaming, are lands within the State of such tribe, and are where the Indian tribe has its primary geographic, social, and historical nexus to the land;*

(B) ~~lands are taken into trust as part of~~ *The Secretary determines that the proposed gaming activity is in the best interest of the Indian tribe and its*

tribal members, and would not be detrimental to the surrounding community and nearby Indian tribes;

~~(i) a settlement of a land claim,~~

~~(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or~~

~~(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.~~

(C) the Governor and the State legislature of the State in which the gaming activities will be conducted concur;

(D) the nearby Indian tribes concur; and

(E) the county or parish with authority over land that is contiguous to the lands acquired in trust for the benefit of the Indian tribe for the purposes of gaming approve by a majority vote in a county or parish referendum.

(2) Subsection (a) of this section shall not apply to--

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 465 and 467 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Authority of Secretary not affected -- Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Application of Internal Revenue Code of 1986

(1) The provisions of the Internal Revenue Code of 1986 (including sections 1441, 3402(q), 6041, and 6050 I, and chapter 35 of such Code) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.

(e) *(1) In order to consolidate class II gaming and class III gaming development, an Indian tribe may invite one or more other Indian tribes to participate in or benefit from gaming conducted under this Act upon any portion of Indian land that was, as of October 18, 1988, located within the boundaries of the reservation of the inviting Indian tribe, so long as each invited Indian tribe has no ownership interest in any other gaming facility on any other Indian lands and has its primary geographic, social, and historical nexus to land within the State in which the Indian land of the inviting Indian tribe is located.*

(2) Notwithstanding any other provision of law, an Indian tribe invited to conduct class II gaming or class III gaming under paragraph (1) may do so under authority of a lease with the inviting Indian tribe, which lease shall be lawful without the review or approval of the Secretary and which lease shall be deemed by the Secretary to be sufficient evidence of the existence of Indian land of the invited Indian tribe for the purposes of secretarial approval of the Tribal-State compact under this Act.

(3) Notwithstanding any other provision of law, the Indian tribes identified in paragraph (1) may establish this terms and conditions of their lease and other agreements between them in their sole discretion, provided that in no case may the total payments to the inviting Indian tribe under the lease and other agreements exceed 40 percent of the net revenues (defined for such purposes as the revenue available to the 2 Indian tribes after deduction of costs of operating and financing the gaming facility developed on the leased land and of fees due to be paid under the Tribal-State compact) of the gaming activity conducted by the invited Indian tribe.

(4) An invited Indian tribe under this subsection shall be deemed by the Secretary and the Commission to have the sole proprietary interest and responsibility for the conduct of any gaming on lands leased from an inviting Indian tribe.

(5) Conduct of gaming by an invited Indian tribe on lands leased from an inviting Indian tribe under this subsection shall be deemed by the Secretary and the Commission to be conducted under the Act upon Indian lands –

(A) of the invited Indian tribe;

(B) within the jurisdiction of the invited Indian tribe; and

(C) over which the invited Indian tribe has and exercises governmental power.

(f) Notwithstanding any other provision of this Act, an Indian tribe shall not conduct gaming regulated by this Act on Indian lands outside of a State in which the Indian tribe has a reservation on the date of the enactment of this subsection, unless such Indian lands are contiguous to such a reservation of that Indian tribe in the State.

Sec. 2 Statutory Construction

The amendment made by paragraph (1) of section 1 shall be applied prospectively. Compacts or other agreements that govern gaming regulated by this Act on Indian lands that were in effect on the date of the enactment of this Act shall not be affected by the amendments made by paragraph (1) of section 1 of this Act.



NIGA/NCAI TRIBAL LEADER TASK FORCE ON INDIAN GAMING



RESOLUTION # GBW-005-009

By The National Congress Of American Indians Concerning Off-Reservation Gaming

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the United States has a government-to-government relationship with Indian Tribes which is carried out by the Department of Interior pursuant to its policy of government-to-government consultation on regulations and rules impacting Indian Tribes; and

WHEREAS, the Bureau of Indian Affairs (BIA) has established an internal guideline titled “Checklist For Gaming Acquisitions Gaming-Related Acquisitions And IGRA Section 20 Determinations for implementation of the Indian Gaming Regulatory Act (IGRA) Section 20”, which was amended on March 7, 2005, without consulting Tribal Governments in violation of the government-to-government policy of the United States; and

WHEREAS, IGRA was enacted to promote tribal economic development, self-sufficiency and strong tribal governments, and reflects a delicate balance of Tribal, Federal, and State Sovereign interests; and

WHEREAS, Indian gaming is the Native American success story and through Indian gaming, Indian tribes have created more than 550,000 jobs, fund essential government services including education, health care, police and fire services, water, sewer, and sanitation services, transportation, child care and elderly nutrition, and museums and cultural centers; and

WHEREAS, Section 20 of the IGRA (25 U.S.C. § 2719) establishes a general rule that Indian gaming shall be conducted only on Indian lands held prior to 1988, with exceptions for contiguous lands, landless Indian tribes, newly recognized Indian tribes, restored tribes, land claims settlements, and the Section 20 two-part determination for off-reservation land; and

WHEREAS, under the Section 20 two-part determination, the Secretary of the Interior must consult with state and local officials and nearby Indian tribes to determine that any proposed off-reservation gaming is in the best interests of the applicant tribe and not detrimental to the surrounding community which includes nearby Indian Tribes; then the Governor must concur in the Secretary's determination before the applicant tribe may conduct gaming on the off-reservation land;

WHEREAS, through IGRA, Congress provided State and local governments a voice in Indian gaming policy through the Section 20 two-part determination process and through the Tribal-State Compact process;

WHEREAS, the reality of off-reservation gaming is far different than the media misrepresentations and in fact since the enactment of IGRA in 1988 only three Indian Tribes have ever successfully navigated the Section 20 two-part process: all three Tribes had the support of the local government and the concurrence of the Governor; and

WHEREAS, Tribal Governments acknowledge the responsibility to speak on their own behalf regarding gaming locations under the Section 20 two-part process, to promote positive media coverage and reduce public misunderstanding of the land into trust process; and

WHEREAS, Tribal Governments have a long history of respect for and consultation with neighboring Tribes and local governments, which is reflected within the Section 20 two-part process; and

WHEREAS, there have been recent efforts to bypass the Section 20 two-part process through appropriation riders without the benefit of hearings and tribal input.

NOW THEREFORE BE IT RESOLVED, the NCAI strongly opposes amending the Indian Gaming Regulatory Act.

BE IT FURTHER RESOLVED, the NCAI opposes legislation that would diminish the sovereign rights of Tribal Governments and opposes any effort to subordinate Tribal Governments to local governments.

BE IT FURTHER RESOLVED, the NCAI does hereby call upon tribal governments proposing off-reservation gaming locations to promote positive relationships with State and local governments and minimize impacts on the aboriginal rights of nearby Tribes; NCAI also supports the development of a joint subcommittee of the NIGA/NCAI Task Force on Gaming that will encourage cooperation and support for this policy similar to the Tribal Supreme Court Project.

BE IT FURTHER RESOLVED, that the NCAI calls upon state and tribal governments to work together to ensure that local government concerns are addressed through the existing Tribal-State Compact process and the Section 20 two-part determination process.

BE IT FURTHER RESOLVED, that the NCAI does hereby call upon Congress to adhere to the significant process set forth in IGRA's Section 20 and to refrain from appropriations riders that bypass Section 20 or otherwise amend IGRA.

BE IT FURTHER RESOLVED, that the NCAI requests that the Department of Interior engage in a negotiated rulemaking process with Tribal Governments to adopt formal regulations governing the implementation of the Section 20 two-part determination process that respects the interests of tribal governments, including nearby Indian tribes, and state and local governments.

BE IT FURTHER RESOLVED, that the NCAI supports the initial intent of IGRA to support the development of tribal economies.

BE IT FINALLY RESOLVED, that the NCAI requests that Congress pass legislation that will encourage other forms of economic development in Indian country such as energy development incentives and equitable tax exempt bond authority.